



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by his sister, who made submissions on his behalf (hereinafter referred to as the "**Tenant's Representative**").

The Tenant's Representative testified that the landlord was served the notice of hearing of dispute resolution via registered mail on November 22, 2018. The Tenant's Representative provided a Canada Post registered mail tracking number, which is reproduced on the cover of this decision. The landlord confirmed receipt of the notice. I find that the landlord was deemed served with this notice on November 27, 2018, five days after the Tenant's Representative mailed it, in accordance with sections 89 and 90 of the Act.

The landlord testified that the tenant was personally served with his evidence on February 3, 2019. The Tenant's Representative confirmed this.

The landlord testified that, while he did receive the notice of hearing of dispute resolution itself by registered mail, he did not receive any evidence. Instead, he testified that he only received printout of the list of evidence the tenant uploaded to the

Residential Tenancy Branch website. The tenant confirmed this, testifying that she did not know that she was required to deliver hard copies.

I advised the tenant that, as her evidence was not provided to the landlord in compliance with Rule of Procedure 3.1 (or at all), she would not be permitted to rely on it at the hearing. The tenant accepted this, and relied on oral evidence and the landlord's documentary evidence during the hearing.

Issue to be Decided

Is the tenant entitled to the return of his security deposit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered in a month to month tenancy agreement on April 1, 2018. Monthly rent was \$600.00. The tenant paid the landlord a security deposit of \$300.00, which the landlord still retains. The tenancy ended on October 31, 2018.

The landlord gave uncontroverted testimony that a move-in inspection report was made in May or June 2018 by the landlord and the tenant, and that he sent a copy of the report to the tenant by email.

On October 4, 2018, the landlord issued a One Month Notice to End Tenancy to the tenant.

On October 15, 2018, the Tenant's Representative sent a letter to the landlord (on behalf of the tenant) providing the forwarding address of the tenant, asking the security deposit be sent to this address, and asking that a move-out walkthrough inspection be done.

The Tenant's Representative testified that no such inspection was ever done, and that neither she nor the tenant heard from the landlord regarding this matter prior to the tenant vacating the premises. The landlord did not deny this.

The Tenant's Representative testified that she spoke with an agent of the landlord from Vancouver Eviction Services on November 2, 2018, who advised her that she told the landlord that he had 15 days to return the security deposit to the tenant. The landlord did not deny this.

The landlord testified that he still retains the security deposit, and did not return it to the tenant as there was damage done to the rental unit which he alleges was caused by the tenant (the particulars of this damage are outside the scope of this hearing, and I make no findings in relation to them).

The landlord testified that he has yet to make an application to the Residential Tenancy Branch against the tenant in relation to this damage, but intends to in the future.

The landlord also argued that the notice for the return of the damage deposit was premature. He did not elaborate on what he meant by this. I am uncertain if he was referring to this application, or to the October 15, 2018 letter sent by the Tenant's Representative seeking the return of the damage deposit.

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the parties, I find that the tenancy ended on October 31, 2018, and that the tenant provided his forwarding address in writing to the landlord on October 15, 2018.

It is not enough for the landlord to allege he suffered damage caused the tenant, and that he intends to bring a claim against the tenant at some point in the future, to permit the landlord to retain the security deposit after a forwarding address has been given, and the tenancy has ended.

Per section 38(1), I find that the landlord was obligated to either repay the tenant the security deposit or make an application claiming against the security deposit by November 15, 2018 (15 days from October 31, 2018). The landlord did neither. I find that he has failed to comply with his obligations under this section.

I do not find that, as suggested by the landlord, the notice for the return of the security deposit was premature:

- The tenant is entitled to ask that the security deposit be sent to the forwarding address in advance of the move-out date (the landlord does not have comply with this request, as he is required to return it within 15 days of the end of the tenancy, as discussed above).
- The tenant is entitled to bring this application for the return of the security deposit at this time, as the time within which the landlord was obligated to return the deposit or make a claim against it has passed.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with 38(1), I must order that he pay to the tenant double the amount of the security deposit (\$600.00).

Conclusion

Pursuant to sections 38 and 67 of the Act, I find that the tenant is entitled to a monetary order in the amount of \$600.00. Should the landlord fail to comply with this order, this

order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2019

Residential Tenancy Branch